

1 RONALD J. TENPAS  
Acting Assistant Attorney General  
2 Environment and Natural Resources Division  
U.S. Department Of Justice  
3 ROBERT D. MULLANEY  
Trial Attorney  
4 California State Bar No. 116441  
Environmental Enforcement Section  
5 U.S. Department of Justice  
301 Howard Street, Suite 1050  
6 San Francisco, CA 94105  
Tel: (415) 744-6491  
7 Fax: (415) 744-6476  
E-mail: Robert.Mullaney@usdoj.gov  
8

9 GEORGE S. CARDONA  
United States Attorney  
10 Central District of California  
Federal Building, Suite 7516  
11 300 North Los Angeles Street  
Los Angeles, CA 90012  
12 Tel: (213) 894-2400  
Fax: (213) 894-0141  
13

Attorneys for Plaintiff United States of America

14 [Attorneys for Plaintiff California DTSC on next page]  
15

16 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION

18 UNITED STATES OF AMERICA,  
19 et al., )

Plaintiffs, )

20 v. )

21 AZUSA PIPE AND TUBE  
22 BENDING CORP., et al., )

23 Defendants. )  
24  
25  
26  
27  
28

Case No. CV-06-0165-CAS(RZx)

CONSENT DECREE

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 THEODORA BERGER  
Senior Assistant Attorney General  
3 DONALD A. ROBINSON  
Deputy Attorney General  
4 ANN RUSHTON (Cal. Bar No. 62597)  
Deputy Attorney General  
5 California Department of Justice  
300 South Spring Street  
6 Los Angeles, California 90013  
Tel: (213) 897-2608  
7 Fax: (213) 897-2802  
E-mail: Ann.Rushton@doj.ca.gov  
8  
9 Attorneys for Plaintiff California  
Department of Toxic Substances Control

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## I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the California Department of Toxic Substances Control ("DTSC") filed an amended joint complaint (the "complaint") in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, against Azusa Pipe and Tube Bending Corp., Frederick G. Tressel, Ronald F. Tressel, and Frederick G. Tressel and Violet M. Tressel, in their representative capacity as Trustees of the Tressel Family Trust ("Settling Defendants").

B. The United States and DTSC in their complaint seek, inter alia: (1) reimbursement from Settling Defendants of costs incurred by EPA, the United States Department of Justice, and DTSC for response actions at the Baldwin Park Operable Unit (Area 2) of the San Gabriel Valley Superfund Sites, Areas 1-4, in Los Angeles County, California (the "BPOU Area"), together with accrued interest; and (2) performance of studies and response work by Settling Defendants at the BPOU Area consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"). DTSC also asserts a claim that the Settling Federal Agencies are liable to DTSC under Section 107 of CERCLA, 42 U.S.C. § 9607, for DTSC Response Costs.

C. The United States has requested and reviewed Financial Information from the "Settling Defendants" to determine whether each of the Settling Defendants is financially able to pay response costs incurred and to be incurred at the BPOU Area. Based upon this Financial Information, the United States has determined that the Settling Defendants are able to pay no more than the amounts specified in Section VI (Payments by Settling Defendants and Settling Federal Agencies) of this Decree.

1 D. The Settling Defendants who have entered into this Consent Decree do  
2 not admit, and specifically deny: (i) any liability to Plaintiffs arising out of the  
3 transactions or occurrences alleged in the complaint; and (ii) that the release or  
4 threatened release of hazardous substance(s) at or from the BPOU Area constitutes  
5 an imminent or substantial endangerment to the public health or welfare or the  
6 environment. The Settling Federal Agencies do not admit any liability arising out  
7 of the transactions or occurrences alleged in the complaint or in any claim or  
8 counterclaim asserted, or which could be asserted, by DTSC or Settling  
9 Defendants.

10 E. The work required to implement the Record of Decision ("ROD") for the  
11 BPOU Area, as supplemented by the Explanation of Significant Differences  
12 ("ESD"), is being performed by other parties pursuant to EPA's June 30, 2000  
13 Unilateral Administrative Order No. 2000-13 (as amended) issued under Section  
14 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of RCRA, 42 U.S.C. § 6973  
15 ("EPA's Order"), relating to the BPOU Area.

16 F. The United States, DTSC, and Settling Defendants agree, and the Court  
17 by entering this Consent Decree finds, that this Consent Decree has been  
18 negotiated by the Parties in good faith, that settlement of this matter will avoid  
19 prolonged and complicated litigation between the Parties, and that this Consent  
20 Decree is fair, reasonable, and in the public interest.

21 NOW, THEREFORE, with the consent of the Parties to this Decree, it  
22 is hereby ORDERED, ADJUDGED, AND DECREED:

## 23 II. JURISDICTION

24 1. This Court has jurisdiction over the subject matter of this action  
25 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 6973(a), 9606, 9607,  
26 and 9613(b). This Court also has personal jurisdiction over the Settling  
27 Defendants. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and  
28 28 U.S.C. § 1391(b) and (c). Settling Defendants consent to and shall not

1 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and  
2 enforce this Consent Decree.

### 3 III. PARTIES BOUND

4 2. This Consent Decree applies to and is binding upon the following  
5 parties: the United States, DTSC, and Settling Defendants and their respective  
6 successors and assigns. Any change in ownership or corporate status of a Settling  
7 Defendant including, but not limited to, any transfer of assets or real or personal  
8 property, shall in no way alter that Settling Defendant's responsibilities under this  
9 Consent Decree.

### 10 IV. DEFINITIONS

11 3. Unless otherwise expressly provided herein, terms used in this  
12 Consent Decree that are defined in CERCLA, RCRA, or in regulations  
13 promulgated under CERCLA or RCRA shall have the meaning assigned to them in  
14 CERCLA or RCRA or in such regulations. Whenever terms listed below are used  
15 in this Consent Decree or in the appendices attached hereto and incorporated  
16 hereunder, the following definitions shall apply:

17 "BPOU Area" shall mean the Baldwin Park Operable Unit (Area 2) of the  
18 San Gabriel Valley Superfund Sites, Areas 1-4, in and near the cities of Azusa,  
19 Irwindale, and Baldwin Park, in Los Angeles County, California, and depicted  
20 generally on the map attached as Appendix A.

21 "CERCLA" shall mean the Comprehensive Environmental Response,  
22 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

23 "Certification of Completion" shall mean EPA's written determination that  
24 the Remedial Action has been performed and that the performance standards have  
25 been achieved.

26 "Consent Decree" or "Decree" shall mean this Decree and all appendices  
27 attached hereto (listed in Section XIX). In the event of conflict between this  
28 Decree and any appendix, this Decree shall control.

1       “Day” shall mean a calendar day unless expressly stated to be a working  
2 day. “Working day” shall mean a day other than a Saturday, Sunday, or federal  
3 holiday. In computing any period of time under this Consent Decree, where the  
4 last day would fall on a Saturday, Sunday, or federal holiday, the period shall run  
5 until the close of business of the next working day.

6       “DOJ” shall mean the United States Department of Justice and any  
7 successor departments, agencies, or instrumentalities of the United States.

8       “DTSC” shall mean the California Department of Toxic Substances Control  
9 and any predecessor or successor departments or agencies of DTSC.

10       “DTSC Response Costs” shall mean: (i) all costs, including, but not limited  
11 to, direct and indirect costs that DTSC has incurred at or in connection with the  
12 BPOU Area prior to the entry of this Consent Decree, and (ii) all future costs  
13 (including, but not limited to, direct and indirect costs) related to the  
14 implementation or oversight of the Work that DTSC will incur at or in connection  
15 with the BPOU Area.

16       “EPA” shall mean the United States Environmental Protection Agency and  
17 any successor departments, agencies, or instrumentalities of the United States.

18       “EPA Hazardous Substance Superfund” shall mean the Hazardous  
19 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

20       “Explanation of Significant Differences” or “ESD” shall mean the  
21 Explanation of Significant Differences relating to the BPOU Area issued by EPA  
22 in May 1999. The ESD is attached as Appendix D.

23       “Financial Information” shall mean those financial documents identified in  
24 Appendix B.

25       “Interest” shall mean interest at the rate specified for interest on investments  
26 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,  
27 compounded annually on October 1 of each year, in accordance with 42 U.S.C.  
28 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the

1 interest accrues. The rate of interest is subject to change on October 1 of each  
2 year.

3 "Paragraph" shall mean a portion of this Consent Decree identified by an  
4 Arabic numeral or an upper case letter.

5 "Parties" shall mean the United States, DTSC, and Settling Defendants.

6 "Plaintiffs" shall mean the United States and DTSC.

7 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.  
8 § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

9 "ROD" shall mean the EPA Record of Decision and all attachments thereto  
10 relating to the interim remedy for the BPOU Area, which was signed by the  
11 delegate of the Regional Administrator, EPA Region 9, on March 31, 1994. The  
12 ROD is attached as Appendix C.

13 "Remedial Action" shall mean those activities, except for Operation and  
14 Maintenance, undertaken to implement the ROD, as supplemented by the ESD.

15 "Response Costs" shall mean: (i) all past costs, including, but not limited  
16 to, direct and indirect costs, that the United States has incurred at or in connection  
17 with the BPOU Area prior to the entry of this Consent Decree, and (ii) all future  
18 costs (including, but not limited to, direct and indirect costs) related to the  
19 implementation or oversight of the Work that the United States will incur at or in  
20 connection with the BPOU Area.

21 "Section" shall mean a portion of this Consent Decree identified by a  
22 Roman numeral.

23 "Settling Defendants" shall mean Azusa Pipe and Tube Bending Corp.  
24 ("Azusa Pipe"), Frederick G. Tressel, Ronald F. Tressel, and Frederick G. Tressel  
25 and Violet M. Tressel, in their representative capacity as Trustees of the Tressel  
26 Family Trust. For purposes of Paragraphs 18, 24, 27, and 33, Settling Defendants  
27 shall also mean: (i) any shareholder, officer, director, or employee, acting in their  
28 capacities as such, of Azusa Pipe, but only to the extent that any such person or



1 entity within category (i) above has no independent liability for the BPOU Area  
2 other than the liability derived from that person's or entity's relationship to, or  
3 affiliation with, Azusa Pipe, as specified.

4 "Settling Federal Agencies" shall mean those departments, agencies, and  
5 instrumentalities of the United States identified in Appendix E, which are  
6 resolving claims that have been or could be asserted against them with regard to  
7 Response Costs and DTSC Response Costs as provided in this Consent Decree.

8 "Site" shall mean the San Gabriel Valley Superfund Sites, Areas 1-4, in Los  
9 Angeles County, California.

10 "United States" shall mean the United States of America, including its  
11 departments, agencies, and instrumentalities, which includes without limitation  
12 EPA and the Settling Federal Agencies.

13 "Work" shall mean all activities required to be performed to implement the  
14 ROD, as supplemented by the ESD, or to oversee the implementation of the ROD,  
15 as supplemented by the ESD, at or in connection with the BPOU Area.

#### 16 V. STATEMENT OF PURPOSE

17 4. By entering into this Consent Decree, the mutual objectives of the  
18 Parties, as more precisely described in the terms of this Consent Decree, are:

19 a. To reach a settlement among the Parties with respect to the BPOU Area  
20 that allows Settling Defendants to make a cash payment to resolve any claims for  
21 civil or administrative liability under Sections 106 and 107 of CERCLA, 42  
22 U.S.C. §§ 9606, 9607, RCRA Section 7003, 42 U.S.C. § 6973, and Cal. Health &  
23 Safety Code §§ 25355.5 and 25360, for interim response actions and for response  
24 costs related to interim response actions incurred and to be incurred at or in  
25 connection with the BPOU Area, as provided in Section VIII (Covenants by  
26 Plaintiffs) and Section IX (Plaintiffs' Reservation of Rights) of this Decree;

27 b. To reach a settlement among the Parties with respect to the BPOU Area  
28 that allows the Settling Federal Agencies to make a cash payment to resolve any

1 claims for civil or administrative liability under Section 107 of CERCLA, 42  
2 U.S.C. § 9607, for Response Costs and DTSC Response Costs, as provided in  
3 Section VIII (Covenants by Plaintiffs) and Section IX (Plaintiffs' Reservation of  
4 Rights) of this Decree.

5 c. To resolve any claims of Settling Defendants that could have been  
6 asserted against the United States and DTSC with regard to the BPOU Area as  
7 provided in Section X (Covenants Not to Sue by Settling Defendants) of this  
8 Decree;

9 d. To simplify the remaining administrative and judicial enforcement  
10 activities concerning the BPOU Area by resolving the United States' and DTSC's  
11 claims against Settling Defendants for interim response actions and for response  
12 costs related to interim response actions incurred and to be incurred at or in  
13 connection with the BPOU Area, as provided in Section VIII (Covenants by  
14 Plaintiffs) and Section IX (Plaintiffs' Reservation of Rights) of this Decree; and

15 e. To provide for contribution protection for Settling Defendants and  
16 Settling Federal Agencies with respect to matters addressed in this Consent Decree  
17 pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

18 VI. PAYMENTS BY SETTLING DEFENDANTS AND SETTLING  
19 FEDERAL AGENCIES

20 5. By December 18, 2006, Settling Defendants shall deposit \$1,100,000  
21 into an escrow account, bearing interest on commercially reasonable terms, in a  
22 federally-chartered bank (the "Escrow Account"). If the Consent Decree is not  
23 entered by the Court, and the time for any appeal of that decision has run or if the  
24 Court's denial of entry is upheld on appeal, the monies placed in escrow, together  
25 with accrued interest thereon, shall be returned to Settling Defendants. If the  
26 Consent Decree is entered by the Court, Settling Defendants shall, within 15 days  
27 thereof, cause the monies in the Escrow Account to be paid to EPA and DTSC in  
28 accordance with Paragraphs 6, 7, 9, and 10 below.

1           6.     Of the total amount to be paid pursuant to Paragraph 5, Settling  
2 Defendants shall pay \$1,025,000 plus accrued interest thereon to the United  
3 States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to  
4 the U.S. Department of Justice account in accordance with current EFT  
5 procedures, referencing DOJ Case Number 90-11-2-354/22. Of this total amount,  
6 \$43,016 shall reference EPA Region and Site Spill Number 09G3, \$585,165 shall  
7 reference EPA Region and Site Spill Number 09G4, \$14,560 shall reference EPA  
8 Region and Site Spill Number 09PD, and the balance of the amount (\$382,259 and  
9 any accumulated interest) shall reference EPA Region and Site Spill Number  
10 09M4. Payment shall be made in accordance with instructions provided to  
11 Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office  
12 in the Central District of California following lodging of the Consent Decree.

13           7.     At the time of payment, Settling Defendants shall send a letter  
14 confirming the date and reference number of the FedWire EFT to the United  
15 States, EPA, and the Regional Financial Management Officer as provided in  
16 Section XVI (Notices and Submissions) of this Decree.

17           8.     The total amount to be paid pursuant to Paragraph 6 of this Consent  
18 Decree shall be deposited in the Site 09M5 San Gabriel Valley/Baldwin Park  
19 Special Account within the EPA Hazardous Substance Superfund to be retained  
20 and used to conduct or finance response actions at or in connection with the  
21 BPOU Area, or to be transferred by EPA to the EPA Hazardous Substance  
22 Superfund.

23           9.     Of the total amount to be paid pursuant to Paragraph 5, Settling  
24 Defendants shall pay \$75,000 plus accrued interest thereon to DTSC in the form of  
25 a certified check or checks made payable to Cashier, California Department of  
26 Toxic Substances Control, and bearing on its face the docket number of this  
27 proceeding.

28           10.    Settling Defendants shall send their certified check or checks, along

1 with a transmittal letter referencing the Baldwin Park Operable Unit, San Gabriel  
2 Valley Superfund Sites, Project Nos. 300133, 300345, 300349, and 300350, to:

3 Department of Toxic Substances Control  
4 Accounting/Cashier  
5 1001 I Street, 21st Floor  
6 P.O. Box 806  
7 Sacramento, CA 95812-0806

8 A copy of the transmittal letter shall be sent to DTSC as provided in Section XVI  
9 (Notices and Submissions) of this Decree.

10 11. As soon as reasonably practicable after the effective date of this  
11 Consent Decree, and consistent with Paragraph 11.b., the United States, on behalf  
12 of the Settling Federal Agencies, shall:

13 a. Pay \$490,000 to the U.S. Department of Justice account in  
14 accordance with instructions provided to Settling Defendants by the Financial  
15 Litigation Unit of the U.S. Attorney's Office in the Central District of California  
16 following lodging of the Consent Decree. The total amount to be paid by the  
17 Settling Federal Agencies shall be deposited into the Site 09M5 San Gabriel  
18 Valley/Baldwin Park Special Account within the EPA Hazardous Substance  
19 Superfund to be retained and used to conduct or finance response actions at or in  
20 connection with the BPOU Area, or to be transferred by EPA to the EPA  
21 Hazardous Substance Superfund. At the time of payment, the Settling Federal  
22 Agencies shall send a letter confirming the date and reference number of the  
23 payment to the United States, EPA, and the Regional Financial Management  
24 Officer as provided in Section XVI (Notices and Submissions) of this Decree, and  
25 shall reference DOJ Case Number 90-11-2-354/22 and EPA Region and Site Spill  
26 Number 09M4.

27 b. If the payment to EPA required by Paragraph 11.a. is not made as  
28 soon as reasonably practicable, the appropriate EPA Regional Branch Chief may  
raise any issues relating to payment to the appropriate DOJ Assistant Chief for the  
Environmental Defense Section. In any event, if this payment is not made within

1 120 days after the date of entry of this Consent Decree, EPA and DOJ have agreed  
2 to resolve the issue within 30 days in accordance with a letter agreement dated  
3 December 28, 1998.

4 c. Pay to DTSC \$105,000 in reimbursement of DTSC Response Costs in  
5 accordance with instructions for electronic funds transfer provided by DTSC.

6 d. At the time of payment, the United States shall send a letter  
7 confirming the date and reference number of the electronic funds transfer and  
8 referencing the Baldwin Park Operable Unit, San Gabriel Valley Superfund Sites,  
9 Project Nos. 300133, 300345, 300349, and 300350, to DTSC as provided in  
10 Section XVI (Notices and Submissions) of this Decree, and to:

11 Department of Toxic Substances Control  
12 Accounting/Cashier  
1001 I Street, 21st Floor  
13 P.O. Box 806  
Sacramento, CA 95812-0806

14 12. The Parties to this Consent Decree recognize and acknowledge that  
15 the payment obligations of the Settling Federal Agencies under this Consent  
16 Decree can only be paid from appropriated funds legally available for such  
17 purpose. Nothing in this Consent Decree shall be interpreted or construed as a  
18 commitment or requirement that any Settling Federal Agency obligate or pay  
19 funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other  
20 applicable provision of law.

21 VII. FAILURE TO COMPLY WITH CONSENT DECREE REQUIREMENTS

22 13. Interest on Late Payments. If Settling Defendants fail to make any  
23 payment under Paragraph 5 by the required due date, Interest shall continue to  
24 accrue on the unpaid balance through the date of payment. Settling Defendants  
25 shall make all payments required by this Paragraph in the manner described in  
26 Paragraphs 6, 7, 9, and 10 unless otherwise directed in writing by EPA or DTSC.

27 14. Stipulated Penalty.

28 a. In addition to the Interest required by Paragraph 13 (Interest on Late

1 Payments), if Settling Defendants fail to remit the payment required by Paragraph  
2 5 when due, then Settling Defendants also shall pay stipulated penalties to the  
3 United States of \$2,500 per day for each day that the payment is late.

4 b. Stipulated penalties are due and payable to the United States within 30  
5 days of the date of the demand for payment of the penalties by the United States.  
6 All payments to the United States under this Paragraph shall be identified as  
7 "stipulated penalties" and shall be made by certified or cashier's check made  
8 payable to "EPA Hazardous Substance Superfund." The check, or a letter  
9 accompanying the check, shall reference the name and address of the party making  
10 payment, the Site name, EPA Region and Site Spill Number 0927, and DOJ Case  
11 Number 90-11-2-354/22, and shall be sent to: EPA - Cincinnati Accounting  
12 Operations, Attn: Region 9 Receivables, P.O. Box 371099M, Pittsburgh, PA  
13 15251.

14 c. In addition to the Interest required by Paragraph 13 (Interest on Late  
15 Payments), if Settling Defendant fails to remit the payment required by Paragraph  
16 5 when due, then Settling Defendant also shall pay stipulated penalties to DTSC of  
17 \$500 per day for each day that the payment is late.

18 d. Stipulated penalties are due and payable to DTSC within 30 days of the  
19 date of the demand for payment of the penalties by DTSC. All payments to DTSC  
20 under this Paragraph shall be identified as "stipulated penalties" and shall be made  
21 by certified or cashier's check made payable to "Cashier, California Department of  
22 Toxic Substances Control." The check, or a letter accompanying the check, shall  
23 reference the name and address of the party making payment and the Site name,  
24 and shall be sent to:

25 Department of Toxic Substances Control  
26 Accounting/Cashier  
27 1001 I Street, 21st Floor  
28 P.O. Box 806  
Sacramento, CA 95812-0806

e. At the time of payment of any stipulated penalties to the United States,

1 Settling Defendants shall send copies of check(s), and any accompanying  
2 transmittal letter(s), to the United States, EPA, and the Regional Financial  
3 Management Officer as provided in Section XVI (Notices and Submissions) of this  
4 Consent Decree. At the time of payment of any stipulated penalties to DTSC,  
5 Settling Defendants shall send copies of check(s), and any accompanying  
6 transmittal letter(s), to DTSC as provided in Section XVI (Notices and  
7 Submissions) of this Consent Decree.

8 f. Penalties shall accrue as provided in this Paragraph regardless of whether  
9 EPA or DTSC has notified Settling Defendants of the violation or made a demand  
10 for payment, but need only be paid upon demand. All penalties shall begin to  
11 accrue on the day after payment is due and shall continue to accrue through the  
12 date of payment. Nothing herein shall prevent the simultaneous accrual of separate  
13 penalties for separate violations of this Consent Decree.

14 15. If the United States or DTSC brings an action to enforce this Consent  
15 Decree, Settling Defendants shall reimburse the Plaintiff(s) bringing the action for  
16 all costs of such action, including, but not limited to, costs of attorney time.

17 16. Payments made under this Section shall be in addition to any other  
18 remedies or sanctions available to Plaintiffs by virtue of Settling Defendants'  
19 failure to comply with the requirements of this Consent Decree.

20 17. Notwithstanding any other provision of this Section, the United States  
21 may, in its unreviewable discretion, waive payment of any portion of the stipulated  
22 penalties that have accrued to the United States pursuant to this Consent Decree.  
23 Notwithstanding any other provision of this Section, DTSC may, in its  
24 unreviewable discretion, waive payment of any portion of the stipulated penalties  
25 that have accrued to DTSC pursuant to this Consent Decree. Payment of stipulated  
26 penalties shall not excuse Settling Defendants from the payment obligation as  
27 required by Section VI or from performance of any other requirements of this  
28 Consent Decree.

1 VIII. COVENANTS BY PLAINTIFFS

2 18. Covenant Not to Sue Settling Defendants by United States and DTSC.

3 In consideration of the payment that will be made by Settling Defendants under the  
4 terms of this Consent Decree, and except as otherwise specifically provided in  
5 Section IX (Plaintiffs' Reservation of Rights), the United States covenants not to  
6 sue or to take administrative action against Settling Defendants pursuant to  
7 Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and Section 7003 of  
8 RCRA, 42 U.S.C. § 6973, for performance of the Work and for recovery of  
9 Response Costs. In consideration of the payment that will be made by Settling  
10 Defendants under the terms of this Consent Decree, and except as otherwise  
11 specifically provided in Section IX (Plaintiffs' Reservation of Rights), DTSC  
12 covenants not to sue or to take administrative action against Settling Defendants  
13 pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, or Cal. Health & Safety  
14 Code §§ 25355.5 and 25360 for recovery of DTSC Response Costs. These  
15 covenants not to sue shall take effect upon the receipt by EPA and DTSC of all  
16 payments required by Paragraphs 5 through 10 of Section VI (Payment by Settling  
17 Defendants and Settling Federal Agencies) and any amount due under Section VII  
18 (Failure to Comply with Consent Decree Requirements). These covenants not to  
19 sue accorded to Settling Defendants are conditioned upon satisfactory performance  
20 by Settling Defendants of their obligations under this Consent Decree. With  
21 respect to each Settling Defendant, these covenants not to sue are also conditioned  
22 upon the veracity and completeness of the Financial Information provided to EPA  
23 by such Settling Defendant. If the Financial Information of any Settling Defendant  
24 is subsequently determined by EPA or DTSC to be false or, in any material respect,  
25 inaccurate, such Settling Defendant shall forfeit all payments made pursuant to this  
26 Consent Decree and these covenants not to sue and the contribution protection in  
27 Section XII (Effect of Settlement; Contribution Protection) shall be null and void  
28 as to that Settling Defendant. Such forfeiture shall not constitute liquidated



1 damages and shall not in any way foreclose the United States' or DTSC's right to  
2 pursue any other causes of action arising from such Settling Defendant's false or  
3 materially inaccurate information. These covenants not to sue extend only to  
4 Settling Defendants and do not extend to any other person.

5 19. Covenant for Settling Federal Agencies by EPA. In consideration of  
6 the payments that will be made by the United States, on behalf of the Settling  
7 Federal Agencies, and except as specifically provided in Section IX (Plaintiffs'  
8 Reservation of Rights), EPA covenants not to take administrative action against the  
9 Settling Federal Agencies pursuant to Section 107(a) of CERCLA, 42 U.S.C.  
10 § 9607(a), to recover Response Costs. This covenant shall take effect upon receipt  
11 by EPA of all payments required by Paragraph 11 of Section VI (Payments by  
12 Settling Defendants and Settling Federal Agencies). This covenant is conditioned  
13 upon the satisfactory performance by the Settling Federal Agencies of their  
14 obligations under this Consent Decree. This covenant extends only to the Settling  
15 Federal Agencies and does not extend to any other person.

16 20. Covenant Not to Sue Settling Federal Agencies by DTSC. In  
17 consideration of the payments that will be made by the United States, on behalf of  
18 the Settling Federal Agencies, and except as specifically provided in Section IX  
19 (Plaintiffs' Reservation of Rights), DTSC covenants not to sue or take  
20 administrative action against the Settling Federal Agencies pursuant to Section  
21 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover DTSC Response Costs. This  
22 covenant shall take effect upon receipt by DTSC of all payments required by  
23 Paragraph 11 of Section VI (Payments by Settling Defendants and Settling Federal  
24 Agencies). This covenant is conditioned upon the satisfactory performance by the  
25 Settling Federal Agencies of their obligations under this Consent Decree. This  
26 covenant extends only to the Settling Federal Agencies and does not extend to any  
27 other person.

1                   IX. PLAINTIFFS' RESERVATION OF RIGHTS

2           21.   Pre-certification Reservations. EPA reserves the right to issue an  
3 administrative order seeking to compel the Settling Federal Agencies: (1) to  
4 perform response actions relating to the BPOU Area or (2) to reimburse the United  
5 States for additional costs of response if, prior to Certification of Completion of the  
6 Remedial Action:

7           (i) conditions at the BPOU Area, previously unknown to EPA, are  
8 discovered, or

9           (ii) information, previously unknown to EPA, is received, in whole or in part,  
10 and EPA determines that these previously unknown conditions or information  
11 together with any other relevant information indicates that the Remedial Action is  
12 not protective of human health or the environment. If EPA makes such a  
13 determination, DTSC reserves, and this Consent Decree is without prejudice to, the  
14 right to institute proceedings in this action or in a new action, or to issue an  
15 administrative order seeking to compel Settling Federal Agencies to reimburse  
16 DTSC for additional costs of response.

17          22.   Post-certification Reservations. EPA reserves the right to issue an  
18 administrative order seeking to compel the Settling Federal Agencies: (1) to  
19 perform response actions relating to the BPOU Area or (2) to reimburse the United  
20 States for additional costs of response if, subsequent to Certification of Completion  
21 of the Remedial Action:

22          (i) conditions at the BPOU Area, previously unknown to EPA, are  
23 discovered, or

24          (ii) information, previously unknown to EPA, is received, in whole or in part,  
25 and EPA determines that these previously unknown conditions or this information  
26 together with other relevant information indicate that the Remedial Action is not  
27 protective of human health or the environment. If EPA makes such a  
28 determination, DTSC reserves, and this Consent Decree is without prejudice to, the

1 right to institute proceedings in this action or in a new action, or to issue an  
2 administrative order seeking to compel Settling Federal Agencies to reimburse  
3 DTSC for additional costs of response.

4       23. For purposes of Paragraph 21, the information and the conditions  
5 known to EPA shall include only that information and those conditions known to  
6 EPA as of May 31, 1999, the date of the ESD supplementing the ROD, and set  
7 forth in the ROD, the ESD, and the administrative record supporting the ROD and  
8 the ESD. For purposes of Paragraph 22, the information and the conditions known  
9 to EPA shall include only that information and those conditions known to EPA as  
10 of the date of Certification of Completion of the Remedial Action, and set forth in  
11 the ROD, the ESD, the administrative record supporting the ROD and the ESD, and  
12 the post-ROD administrative record.

13       24. General Reservation of Rights. The covenants set forth in Paragraphs  
14 18 - 20 do not pertain to any matters other than those expressly specified therein.  
15 The United States and DTSC reserve, and this Consent Decree is without prejudice  
16 to, all rights of the United States and DTSC against Settling Defendants, and EPA,  
17 DTSC, and the federal natural resource trustees reserve, and this Consent Decree is  
18 without prejudice to, all rights against the Settling Federal Agencies, with respect  
19 to all other matters including, but not limited to, the following:

20       (1) claims based on a failure by Settling Defendants or Settling Federal  
21 Agencies to meet a requirement of this Consent Decree;

22       (2) liability arising from the past, present, or future disposal, release, or  
23 threat of release of hazardous substances, pollutants, contaminants, or solid wastes  
24 outside of the BPOU Area;

25       (3) liability based upon Settling Defendants' transportation, treatment,  
26 storage, or disposal, or the arrangement for the transportation, treatment, storage, or  
27 disposal of hazardous substances, pollutants, contaminants, or solid wastes at or in  
28 connection with the BPOU Area after signature of this Consent Decree by the

1 Settling Defendants;

2 (4) liability based upon Settling Federal Agencies' transportation, treatment,  
3 storage, or disposal, or the arrangement for the transportation, treatment, storage, or  
4 disposal of hazardous substances, pollutants, contaminants, or solid wastes at or in  
5 connection with the BPOU Area after signature of this Consent Decree by the  
6 Settling Federal Agencies;

7 (5) liability for damages for injury to, destruction of, or loss of natural  
8 resources, and for the costs of any natural resource damage assessments;

9 (6) criminal liability;

10 (7) liability for response costs and response actions at additional operable  
11 units at the Site, or a final response action, including, but not limited to, the final  
12 Record of Decision for the BPOU Area;

13 (8) liability for injunctive relief or administrative order enforcement under  
14 Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions that are not within  
15 the BPOU Area; and

16 (9) liability for costs incurred or to be incurred that are not within the  
17 definition of Response Costs or DTSC Response Costs.

18 In addition, EPA reserves, and this Consent Decree is without prejudice to, all  
19 rights against the Settling Federal Agencies with respect to any administrative  
20 order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606.

21 25. Notwithstanding any other provision of this Consent Decree, the  
22 United States and DTSC retain all authority and reserve all rights, and this Consent  
23 Decree is without prejudice to, the right to reinstitute or reopen this action, or to  
24 commence a new action seeking relief other than as provided in this Consent  
25 Decree from a Settling Defendant, if the Financial Information provided, or the  
26 financial certification made in Paragraph 45.b., by such Settling Defendant is false  
27 or, in a material respect, inaccurate.

28 26. Notwithstanding any other provision of this Consent Decree, the

1 United States and DTSC retain all authority and reserve all rights to take any and  
2 all response actions authorized by law.

3 X. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS

4 27. Settling Defendants hereby covenant not to sue and agree not to assert  
5 any claims or causes of action against the United States or DTSC, or their  
6 contractors or employees, with respect to the BPOU Area or this Consent Decree,  
7 including, but not limited to:

8 a. any direct or indirect claim for reimbursement from the Hazardous  
9 Substance Superfund (established pursuant to the Internal Revenue Code, 26  
10 U.S.C. § 9507) based on CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42  
11 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

12 b. any claims arising out of response actions at or in connection with the  
13 BPOU Area, including any claims under the United States Constitution, the  
14 California Constitution, the Tucker Act, 42 U.S.C. § 1491, the Equal Access to  
15 Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

16 c. any claims against the United States, including any department, agency,  
17 or instrumentality of the United States, under CERCLA Sections 107 or 113 related  
18 to the BPOU Area;

19 d. any claims against the State of California, including any department,  
20 agency, or instrumentality of the State of California, under CERCLA Sections 107  
21 or 113 related to the BPOU Area; and

22 e. any claims against the United States or DTSC arising out of response  
23 activities at the BPOU Area, including claims based on EPA's and DTSC's  
24 selection of response actions, oversight of response activities or approval of plans  
25 for such activities.

26 28. Except as provided in Paragraph 30 (Waiver of Claims) and Paragraph  
27 37 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply  
28 to Settling Defendants in the event the United States or DTSC brings a cause of

1 action or issues an order against Settling Defendants pursuant to the reservations  
2 set forth in Paragraph 24, but only to the extent that Settling Defendants' claims  
3 arise from the same response action or response costs that the United States or  
4 DTSC is seeking against the Settling Defendants pursuant to the applicable  
5 reservation.

6 29. Nothing in this Consent Decree shall be deemed to constitute approval  
7 or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42  
8 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

9 30. Settling Defendants hereby agree not to assert any CERCLA claims or  
10 causes of action that they may have for all matters relating to the BPOU Area,  
11 including for contribution, against any person other than Settling Defendants'  
12 insurance carriers and potentially responsible parties who have received in the past  
13 or receive in the future special notice from EPA in connection with the BPOU Area  
14 and who are not signatories to this Consent Decree or another Consent Decree in  
15 connection with the BPOU Area, for damages or costs of any kind relating to  
16 response actions and costs incurred at the BPOU Area, including without  
17 limitation, claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and  
18 9613, common law claims of negligence, contribution, equitable indemnity and  
19 restitution, and claims under any other federal, state or local statutory or common  
20 law. This waiver shall not apply with respect to any defense, claim, or cause of  
21 action that Settling Defendants may have against any person if such person asserts  
22 a claim or cause of action relating to the BPOU Area against Settling Defendants.

#### 23 XI. SETTLING DEFENDANTS' RESERVATION OF RIGHTS

24 31. With the exception of the defenses or claims covered by Paragraph 37  
25 below (Waiver of Claim-Splitting Defenses), Settling Defendants reserve their  
26 rights to raise any and all defenses or claims in any future proceeding brought by  
27 the United States or DTSC pursuant to the reservations set forth in Paragraph 24 to  
28 the extent that Settling Defendants' defenses or claims arise from the same

1 response action or response costs that the United States or DTSC is seeking against  
2 the Settling Defendants pursuant to the applicable reservation. Nothing in this  
3 Consent Decree shall be construed as an admission of liability.

4 **XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

5 32. Except as expressly provided in Paragraph 30, nothing in this Consent  
6 Decree shall be construed to create any rights in, or grant any cause of action to,  
7 any person not a Party to this Consent Decree. The preceding sentence shall not be  
8 construed to waive or nullify any rights that any person not a signatory to this  
9 Decree may have under applicable law. Except as provided in Paragraph 30, each  
10 of the Parties expressly reserves any and all rights (including, but not limited to,  
11 any right to contribution), defenses, claims, demands, and causes of action which  
12 each Party may have with respect to any matter, transaction, or occurrence relating  
13 in any way to the Site against any person not a Party hereto.

14 33. The Parties agree, and by entering this Consent Decree this Court  
15 finds, that Settling Defendants are entitled, as of the effective date of this Consent  
16 Decree, to protection from contribution actions or claims as provided by CERCLA  
17 Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent  
18 Decree. For purposes of this Paragraph, “matters addressed” shall mean (a) the  
19 Work, (b) all response costs incurred prior to the entry of this Consent Decree by  
20 the United States, DTSC, or any other person at or in connection with the BPOU  
21 Area, and (c) all response costs related to the implementation or oversight of the  
22 Work to be incurred after the entry of this Consent Decree by the United States,  
23 DTSC, or any other person at or in connection with the BPOU Area. The “matters  
24 addressed” in this Consent Decree do not include those response costs or response  
25 actions as to which the United States or DTSC has reserved its rights under this  
26 Consent Decree (except for claims for failure to comply with this Decree), in the  
27 event that the United States or DTSC asserts rights against Settling Defendants  
28 coming within the scope of such reservations.

34. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Federal Agencies are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. For purposes of this Paragraph, “matters addressed” shall mean Response Costs and DTSC Response Costs.

35. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify the United States and DTSC in writing no later than 60 days prior to the initiation of such suit or claim.

36. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States and DTSC within 10 days of service of the complaint on them. In addition, with respect to any such suit or claim, Settling Defendants shall notify the United States and DTSC within 10 days of service on them or receipt by them of any Motion for Summary Judgment and within 10 days of receipt by them of any order from a court setting a case for trial.

37. In any subsequent administrative or judicial proceeding initiated by the United States or DTSC for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or DTSC in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants by Plaintiffs).

### XIII. ACCESS

38. If Settling Defendants own or control any property where access is



1 needed to implement response activities at the Site, then, commencing on the date  
2 of lodging of the Consent Decree, Settling Defendants shall provide the United  
3 States, the State of California, and their representatives, including EPA and its  
4 contractors, with access at all reasonable times to such property, for the purpose of  
5 conducting any response activity related to the Site, including, but not limited to,  
6 the following activities:

- 7 a. Monitoring, investigation, removal, remedial or other activities at the Site;
- 8 b. Verifying any data or information submitted to the United States or the  
9 State;
- 10 c. Conducting investigations relating to contamination at or near the Site;
- 11 d. Obtaining samples;
- 12 e. Assessing the need for, planning, or implementing additional response  
13 actions at or near the Site;
- 14 f. Inspecting and copying records, operating logs, contracts, or other  
15 documents maintained or generated by Settling Defendants or their agents,  
16 consistent with Section XIV (Access to Information); and
- 17 g. Assessing Settling Defendants' compliance with this Consent Decree.

18 39. Notwithstanding any provision of this Consent Decree, the United  
19 States and the State of California retain all of their access authorities and rights,  
20 including enforcement authorities related thereto, under CERCLA, RCRA, and any  
21 other applicable statute or regulations.

#### 22 XIV. ACCESS TO INFORMATION

23 40. Settling Defendants shall provide to EPA and DTSC, upon request,  
24 copies of all documents and information within their possession or control or that  
25 of their contractors or agents relating to activities at the Site or to the  
26 implementation of this Consent Decree, including, but not limited to, sampling,  
27 analysis, chain of custody records, manifests, trucking logs, receipts, reports,  
28 sample traffic routing, correspondence, or other documents or information related

1 to the Site.

2 41. Confidential Business Information and Privileged Documents.

3 a. Settling Defendants may assert business confidentiality claims covering  
4 part or all of the documents or information submitted to Plaintiffs under this  
5 Consent Decree to the extent permitted by and in accordance with Section  
6 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).  
7 Documents or information determined to be confidential by EPA will be accorded  
8 the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of  
9 confidentiality accompanies documents or information when they are submitted to  
10 EPA and DTSC, or if EPA has notified Settling Defendants that the documents or  
11 information are not confidential under the standards of Section 104(e)(7) of  
12 CERCLA, or 40 C.F.R. Part 2, Subpart B, the public may be given access to such  
13 documents or information without further notice to Settling Defendants.

14 b. Settling Defendants may assert that certain documents, records, and other  
15 information are privileged under the attorney-client privilege or any other privilege  
16 recognized by federal law. If Settling Defendants assert such a privilege in lieu of  
17 providing documents, they shall provide Plaintiffs with the following: (1) the title  
18 of the document, record, or information; (2) the date of the document, record, or  
19 information; (3) the name, title, affiliation (e.g., company or firm), and address of  
20 the author of the document, record, or information; (4) the name and title of each  
21 addressee and recipient; (5) a description of the subject of the document, record, or  
22 information; and (6) the privilege asserted by Settling Defendants. However, no  
23 document, report or other information created or generated pursuant to the  
24 requirements of the Consent Decree shall be withheld on the grounds that it is  
25 privileged.

26 42. No claim of confidentiality shall be made with respect to any data,  
27 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,  
28 scientific, chemical, or engineering data, or any other documents or information

1 evidencing conditions at or around the Site.

2 **XV. RETENTION OF RECORDS; CERTIFICATION**

3 43. Until 10 years after the Settling Defendants' receipt of EPA's  
4 notification, transmitted pursuant to Paragraph 47, of the issuance of EPA's  
5 Certification of Completion of the Work, Settling Defendants shall preserve and  
6 retain all records and documents now in their possession or control, or which come  
7 into their possession or control, that relate in any manner to response actions taken  
8 at the Site or liability of any person for response actions conducted and to be  
9 conducted at the Site, regardless of any corporate retention policy to the contrary.

10 44. At the conclusion of this document retention period, Settling  
11 Defendants shall notify the United States and DTSC at least 90 days prior to the  
12 destruction of any such records or documents, and, upon request by the United  
13 States or DTSC, Settling Defendants shall deliver any such records or documents to  
14 EPA or DTSC. Settling Defendants may assert that certain documents, records and  
15 other information are privileged under the attorney-client privilege or any other  
16 privilege recognized by federal law. If Settling Defendants assert such a privilege,  
17 they shall provide Plaintiffs with the following: (1) the title of the document,  
18 record, or information; (2) the date of the document, record, or information; (3) the  
19 name, title, affiliation (e.g., company or firm), and address of the author of the  
20 document, record, or information; (4) the name and title of each addressee and  
21 recipient; (5) a description of the subject of the document, record, or information;  
22 and (6) the privilege asserted by Settling Defendants. However, no document,  
23 report or other information created or generated pursuant to the requirements of the  
24 Consent Decree shall be withheld on the grounds that it is privileged.

25 45. Settling Defendants hereby certify that, to the best of their knowledge  
26 and belief, after thorough inquiry, they have:

27 a. not altered, mutilated, discarded, destroyed or otherwise disposed of  
28 any records, documents or other information relating to their potential liability

1 regarding the Site since notification of potential liability by the United States or  
2 DTSC or the filing of suit against them regarding the BPOU Area, and that they  
3 have fully complied with any and all EPA requests for information pursuant to  
4 Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e), and  
5 Section 3007 of RCRA, 42 U.S.C. § 6927; and

6 b. submitted to EPA Financial Information that fairly, accurately, and  
7 materially sets forth their financial circumstances, and that those circumstances  
8 have not materially changed between the time the Financial Information was  
9 submitted to EPA and the time Settling Defendants execute this Consent Decree.

10 46. The United States acknowledges that each Settling Federal Agency  
11 (1) is subject to all applicable Federal record retention laws, regulations, and  
12 policies; and (2) has fully complied with any and all EPA requests for information  
13 pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and  
14 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### 15 XVI. NOTICES AND SUBMISSIONS

16 47. Whenever, under the terms of this Consent Decree, written notice is  
17 required to be given or a report or other document is required to be sent by one  
18 Party to another, it shall be directed to the individuals at the addresses specified  
19 below, unless those individuals or their successors give notice of a change to the  
20 other Parties in writing. All notices and submissions shall be considered effective  
21 upon receipt, unless otherwise provided. Written notice as specified herein shall  
22 constitute complete satisfaction of any written notice requirement of the Consent  
23 Decree with respect to the United States, EPA, DTSC, the Settling Federal  
24 Agencies, and the Settling Defendants, respectively.

#### 25 As to the United States:

26 Chief, Environmental Enforcement Section  
27 Environment and Natural Resources Division  
28 U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
Re: DJ # 90-11-2-354/22

1 Robert D. Mullaney  
2 Trial Attorney  
3 Environmental Enforcement Section  
4 U.S. Department of Justice  
5 301 Howard Street, Suite 1050  
6 San Francisco, CA 94105

7 Chief, Environmental Defense Section  
8 Environment and Natural Resources Division  
9 U.S. Department of Justice (DJ # 90-11-6-05554)  
10 P.O. Box 23986  
11 Washington, D.C. 20026-3986

12 Tara M. Bahn  
13 Trial Attorney  
14 Environmental Defense Section  
15 Environment and Natural Resources Division  
16 U.S. Department of Justice  
17 P.O. Box 23986  
18 Washington, D.C. 20026-3986

19 As to EPA:

20 Janet Magnuson, ORC-3  
21 Assistant Regional Counsel  
22 United States Environmental Protection Agency  
23 75 Hawthorne Street  
24 San Francisco, CA 94105

25 and

26 Wayne Praskins, SFD-7-3  
27 EPA Project Coordinator  
28 United States Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

As to the Regional Financial Management Officer:

Joe Schmidt, PMD-5  
United States Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

As to DTSC:

Jacalyn Spizman  
DTSC Project Coordinator  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, CA 90630

and

1 Ann Rushton  
2 Office of the Attorney General  
3 300 South Spring Street  
4 Los Angeles, CA 90013

4 As to Settling Defendants:

5 Azusa Pipe Tube and Bending Corp.  
6 P.O. Box 1321  
7 Azusa, CA 91702

7 Frederick G. Tressel  
8 720 West Camino Real  
9 Arcadia, CA 91007

9 Ronald F. Tressel  
10 1020 North Palm Drive  
11 Azusa, CA 91702

11 XVII. EFFECTIVE DATE

12 48. The effective date of this Consent Decree shall be the date upon which  
13 this Consent Decree is entered by the Court, except as otherwise provided herein.

14 XVIII. RETENTION OF JURISDICTION

15 49. This Court retains jurisdiction over this matter for the purpose of  
16 interpreting and enforcing the terms of this Consent Decree.

17 XIX. INTEGRATION/APPENDICES

18 50. This Consent Decree and its appendices constitute the final, complete  
19 and exclusive agreement and understanding among the Parties with respect to the  
20 settlement embodied in this Consent Decree. The Parties acknowledge that there  
21 are no representations, agreements, or understandings relating to the settlement  
22 other than those expressly contained in this Consent Decree. The following  
23 appendices are attached to and incorporated into this Consent Decree:

24 "Appendix A" is a map that generally depicts the BPOU Area;

25 "Appendix B" is a list of the financial documents submitted to EPA by  
26 Settling Defendants;

27 "Appendix C" is a copy of the ROD;

28 "Appendix D" is a copy of the ESD; and

1 "Appendix E" is the complete list of the Settling Federal Agencies.

2 XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

3 51. This Consent Decree shall be lodged with the Court for a period of  
4 not less than thirty (30) days for public notice and comment. The United States  
5 reserves the right to withdraw or withhold its consent if the comments regarding  
6 the Consent Decree disclose facts or considerations which indicate that the Consent  
7 Decree is inappropriate, improper, or inadequate. Settling Defendants consent to  
8 the entry of this Consent Decree without further notice.

9 52. If for any reason the Court should decline to approve this Consent  
10 Decree in the form presented, this agreement is voidable at the sole discretion of  
11 any Party and the terms of the agreement may not be used as evidence in any  
12 litigation between the Parties.

13 XXI. SIGNATORIES/SERVICE

14 53. Each undersigned representative of Settling Defendants to this  
15 Consent Decree, the Assistant Attorney General for the Environment and Natural  
16 Resources Division of the United States Department of Justice, or her delegate, and  
17 the Deputy Attorney General of the California Department of Justice certifies that  
18 he or she is fully authorized to enter into the terms and conditions of this Consent  
19 Decree and to execute and legally bind such Party to this document.

20 54. Settling Defendants hereby agree not to oppose entry of this Consent  
21 Decree by this Court or to challenge any provision of this Consent Decree unless  
22 the United States has notified Settling Defendants in writing that it no longer  
23 supports entry of the Consent Decree.

24 55. Settling Defendants shall identify, on the attached signature page, the  
25 name, address and telephone number of an agent who is authorized to accept  
26 service of process by mail on behalf of Settling Defendants with respect to all  
27 matters arising under or relating to this Consent Decree. Settling Defendants  
28 hereby agree to accept service in that manner and to waive the formal service

1 requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any  
2 applicable local rules of this Court, including, but not limited to, service of a  
3 summons. The Parties agree that Settling Defendants need not file an answer to the  
4 amended complaint in this action unless or until the Court expressly declines to  
5 enter this Consent Decree.

6 **XXII. FINAL JUDGMENT**

7 56. Upon approval and entry of this Consent Decree by the Court, this  
8 Consent Decree shall constitute a final judgment between and among the United  
9 States, DTSC, and the Settling Defendants. The Court finds that there is no just  
10 reason for delay and therefore enters this judgment as a final judgment under Fed.  
11 R. Civ. P. 54 and 58.

12  
13  
14 Dated: \_\_\_\_\_

15 United States District Judge  
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28



1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States, et al., v. Azusa Pipe and Tube Bending Corp., et al.,  
3 relating to the BPOU Area.

4 FOR THE UNITED STATES OF AMERICA

5 Dated: 15 June 2007

6 Ronald J. Tenpas  
7 Acting Assistant Attorney General  
8 Environment and Natural Resources  
9 Division  
10 U.S. Department of Justice  
11 Washington, D.C. 20530

12 Dated: June 20, 2007

13 Robert D. Mullaney  
14 Trial Attorney  
15 Environmental Enforcement Section  
16 Environment and Natural Resources  
17 Division  
18 U.S. Department of Justice  
19 301 Howard Street, Suite 1050  
20 San Francisco, California 94105

21 Dated: June 20, 2007

22 Tara M. Bahn  
23 Trial Attorney  
24 Environmental Defense Section  
25 Environment and Natural Resources Division  
26 U.S. Department of Justice  
27 P.O. Box 23986  
28 Washington, D.C. 20026-3986

1 FOR THE UNITED STATES OF AMERICA (Cont.)  
2  
3

4 Dated: 3/23/07

5 Keith Takata  
6 Director, Superfund Division  
7 Region IX  
8 U.S. Environmental Protection Agency  
9 75 Hawthorne Street  
10 San Francisco, CA 94105

11 Dated: March 22, 2007

12 Janet Magnuson  
13 Assistant Regional Counsel  
14 U.S. Environmental Protection Agency  
15 Region IX  
16 San Francisco, CA 94105  
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter  
2 of United States, et al., v. Azusa Pipe and Tube Bending Corp., et al., relating to the  
3 BPOU Area.

4  
5 FOR THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES  
6 CONTROL

7  
8 Dated: 5/28/07 \_\_\_\_\_

9 Thomas Cota, Chief  
10 Southern California Cleanup Operations  
11 Branch, Cypress Office  
12 Department of Toxic Substances Control  
13 5796 Corporate Avenue  
14 Cypress, California 90630

15  
16 Dated: 6-1-07 \_\_\_\_\_

17 Ann Rushton  
18 Deputy Attorney General  
19 California Department of Justice  
20 300 South Spring Street  
21 Los Angeles, California 90013  
22  
23  
24  
25  
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27  
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States, et al., v. Azusa Pipe and Tube Bending Corp., et al.,  
3 relating to the BPOU Area.

4  
5 FOR AZUSA PIPE AND TUBE BENDING CORP.

6  
7 Dated: Feb 21 2007

8 RONALD F. TRESSEL  
9 Secretary-Treasurer  
10 Azusa Pipe and Tube Bending Corp.  
11 P.O. Box 1321  
12 Azusa, CA 91702

13  
14 FOR RONALD F. TRESSEL

15  
16 Dated: Feb 21, 2007

17 RONALD F. TRESSEL

18 Agent Authorized to Accept Service on Behalf of Above-signed Parties:

19 Ronald F. Tressel  
20 Secretary-Treasurer  
21 Azusa Pipe and Tube Bending Corp.  
22 1020 North Palm Drive  
23 Azusa, CA 91702  
24 Tel: (626) 969-2708  
25  
26  
27  
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States, et al., v. Azusa Pipe and Tube Bending Corp., et al.,  
3 relating to the BPOU Area.

4 FOR FREDERICK G. TRESSEL

5 Dated: February 21, 2007

6 FREDERICK G. TRESSEL

7  
8 FOR FREDERICK G. TRESSEL AND VIOLET M. TRESSEL, in their  
9 representative capacity as Trustees of the Tressel Family Trust

10  
11 Dated: February 21, 2007

12 FREDERICK G. TRESSEL

13 Agent Authorized to Accept Service on Behalf of Above-signed Parties:

14 Frederick G. Tressel  
15 720 West Camino Real  
16 Arcadia, CA 91007  
17 Tel: (626) 254-8491  
18  
19  
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